UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOEL SOLER and GREGORY SOLER,

Plaintiff,

-AGAINST-

THE CITY OF NEW YORK, SGT. MOHAMADY PATWEKAR, Shield No. 3442, Individually and in his Official Capacity, P.O> FELIX TORRES, Shield No. 4158, Individually and in his Official Capacity, and P.O. GEIDY VICENTE, Shield No. 17738, Individually and in her Official Capacity,

Defendants.

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ANSWER TO COMPLAINT ON BEHALF OF THE CITY OF NEW YORK AND P.O. TORRES

14 Civ. 2323 (PKC)

JURY TRIAL DEMANDED

Defendants City of New York ("City") and Police Officer Felix Torres ("P.O. Torres"), by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for their answer to the plaintiffs' complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint except admit only that plaintiff purports to bring the action as stated therein.

2. Deny the allegations set forth in paragraph "2" of the complaint except admit only that plaintiff purports to bring the action as stated therein.

3. Deny the allegations set forth in paragraph "3" of the complaint, except admit only that plaintiff purports to invoke the jurisdiction of the Court as set forth therein.

4. Deny the allegations set forth in the paragraph "4" of the complaint except admit only that plaintiff purports to lay venue as stated therein.

5. State that paragraph "5" of the complaint sets forth a jury demand to which no response is required.

6. Deny knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph "6" of the complaint.

7. Admit only that the City of New York is a municipality organized pursuant to the laws of the State of New York.

8. Deny the allegations set forth in paragraph "8" of the complaint except admit only that the City of New York maintains a police department, the New York City Police Department ("NYPD") and respectfully refer the Court to the New York City Charter, the Administrative Code and other relevant provisions of law for a recitation of the relationship between defendant City and the NYPD concerning the City's authority to maintain a police department, and its responsibilities incident thereto.

9. Deny the allegations set forth in paragraph "9" of the complaint except admit only P.O. Torres, Sgt, Mohamedy Patwekar, and P.O. Geidy Vicente were members of the NYPD on or about October 28, 2013.

10. State that the allegations set forth in paragraph "10" of the complaint set forth conclusions of law, rather than averments of fact, to which no responses are required.

11. Object to and deny the embedded assertions regarding "each and all of the acts of the defendants alleged herein" and deny the remaining allegations set forth in paragraph "11" of the complaint. Defendants further state that the allegations "while acting within the scope of

their employment" set forth a conclusion of law, rather than an averment of fact, to which no response is required.

12. Object to and deny the embedded assertions regarding "each and all of the acts of the defendants alleged herein" and deny the remaining allegations set forth in paragraph "12" of the complaint. Defendants further state that the allegations "while acting in furtherance of their employment" set forth a conclusion of law, rather than an averment of fact, to which no response is required.

13. Deny the allegations set forth in paragraph "13" of the complaint.

14. Admit only the allegations set forth in paragraph "14" of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint.

16. Object to and deny the embedded assertion of "thereafter" and deny the remaining allegations set forth in the paragraph "15" of the complaint except admit only that plaintiff Joel Soler was at the location and demanded to know why his brother was being arrested.

17. Deny the allegations set forth in paragraph "17" of the complaint.

18. Deny the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Deny the allegations set forth in paragraph "20" of the complaint.

21. Object to and deny the embedded assertion regarding "nevertheless, as a direct result of defendants' actions" and deny the remaining allegations set forth in paragraph "21" except state that each plaintiff spent a period of time in custody pursuant to a lawful arrest.

22. Object to and deny the embedded assertion regarding "defendants' conduct" and deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph "22" of the complaint.

23. Object to and deny the embedded assertion regarding "defendants' conduct" and deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph "23" of the complaint.

24. Object to and deny the embedded assertion regarding "the foregoing" and deny the remaining allegations set forth in paragraph "24" of the complaint.

25. Object to and deny the embedded assertion regarding "the aforementioned acts of defendants, their agents, servants and employees" and state that the remaining allegations set forth in paragraph "25" of the complaint set forth a conclusion of law, rather than an averment of fact, to which no response is required.

26. Object to and deny the embedded assertion regarding "all of the aforementioned acts" and deny the remaining allegations set forth in paragraph "26" of the complaint.

27. Object to and deny the embedded assertion regarding "the acts complained of" and deny the remaining allegations set forth in paragraph "27" of the complaint.

28. Object to and deny the embedded assertion regarding "the acts complained of" and deny the remaining allegations set forth in paragraph "28" of the complaint.

29. Deny the allegations set forth in paragraph "29" of the complaint" and further state that the allegations set forth therein regarding "acting under color of state law" set forth a conclusion of law, rather than an averment of fact, to which no response is required.

30. In response to the allegations set forth in paragraph “30” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1” through “29,” inclusive of their answer, as is fully set forth herein.

31. Object to and deny the embedded assertion regarding “defendants’ conduct” and deny the remaining allegations set forth in paragraph “31” of the complaint.

32. Object to and deny the embedded assertion regarding “the foregoing” and deny the remaining allegations set forth in paragraph “32” of the complaint.

33. In response to the allegations set forth in paragraph “33” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1” through “32,” inclusive of their answer, as is fully set forth herein.

34. Deny the allegations set forth in paragraph “34” of the complaint.

35. Object to and deny the embedded assertion regarding “the acts complained of” and deny the remaining allegations set forth in paragraph “35” of the complaint.

36. Object to and deny the embedded assertion regarding “the acts complained of” and deny the remaining allegations set forth in paragraph “36” of the complaint.

37. Object to and deny the embedded assertion regarding “those customs, policies, patterns and practices” and deny the remaining allegations set forth in paragraph “37” of the complaint.

38. Object to and deny the embedded assertion regarding “the aforesaid customs, policies, usages, practices, procedures and rules” and deny the remaining allegations set forth in paragraph “38” of the complaint and all its subparts.

39. Repeat and reassert all prior objections and deny the allegations set forth in paragraph “39” of the complaint.

40. Repeat and reassert all prior objections and deny the allegations set forth in paragraph “40” of the complaint.

41. Repeat and reassert all prior objections and deny the allegations set forth in paragraph “41” of the complaint.

42. Repeat and reassert all prior objections and deny the allegations set forth in paragraph “42” of the complaint.

43. Deny the allegations set forth in paragraph “43” of the complaint and further state that the allegations regarding “acting under color of state law” state a conclusion of law, rather than an averment of fact, to which no response is required.

44. Deny the allegations set forth in paragraph “44” of the complaint and further state that the allegations regarding “acting under color of state law” state a conclusion of law, rather than an averment of fact, to which no response is required.

45. Object to and deny the embedded assertion regarding “all of the foregoing acts” and deny the remaining allegations set forth in paragraph “45” of the complaint.

46. In response to the allegations set forth in paragraph “46” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1” through “45,” inclusive of their answer, as is fully set forth herein.

47. Deny the allegations set forth in paragraph “47” of the complaint except admit only that a document purporting to be a Notice of Claim was received by the New York City Comptroller’s Office.

48. Deny the allegations set forth in paragraph “48” of the complaint except admit only that, as of the date hereof, defendant City has made no payment to plaintiffs for their alleged claims.

49. Admit only that defendant City conducted hearings of the plaintiffs pursuant to 50-h of the General Municipal Law.

50. Deny the allegations set forth in paragraph "50" of the complaint except admit only that the complaint was filed on April 3, 2014.

51. Deny the allegations set forth in paragraph "51" of the complaint.

52. Deny the allegations set forth in paragraph "52" of the complaint.

53. In response to the allegations set forth in paragraph "53" of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through "52," inclusive of their answer, as is fully set forth herein.

54. Deny allegations set forth in paragraph "54" of the complaint.

55. Object to and deny the embedded assertion regarding the "aforesaid assault and battery" and deny the remaining allegations set forth in paragraph "55" of the complaint and further state that the allegations regarding "acting within the scope of their employment" set forth a conclusion of law, rather than an averment of fact, to which no response is required.

56. Object to and deny the embedded assertion regarding the "aforesaid assault and battery" and deny the remaining allegations set forth in paragraph "56" of the complaint.

57. In response to the allegations set forth in paragraph "57" of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through "56," inclusive of their answer, as is fully set forth herein.

58. Object to and deny the embedded assertions regarding "the aforesaid conduct" and deny the remaining allegations set forth in paragraph "58" of the complaint.

59. Object to and deny the embedded assertions regarding "the foregoing" and deny the remaining allegations set forth in paragraph "59" of the complaint.

60. Object to and deny the embedded assertions regarding “the foregoing” and deny the remaining allegations set forth in paragraph “60” of the complaint.

61. In response to the allegations set forth in paragraph “61” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1” through “60” inclusive of their answer, as is fully set forth herein.

62. Object to and deny the embedded assertions regarding “the aforementioned conduct” and deny the remaining allegations set forth in paragraph “62” of the complaint.

63. Object to and deny the embedded assertions regarding “the aforementioned conduct” and deny the remaining allegations set forth in paragraph “63” of the complaint and further state that the allegations regarding “acting in furtherance of their employment” set forth a conclusion of law, rather than an averment of fact, to which no response is required.

64. Object to and deny the embedded assertions regarding “the aforementioned conduct” and deny the remaining allegations set forth in paragraph “64” of the complaint.

65. Object to and deny the embedded assertions regarding “the aforementioned conduct” and deny the remaining allegations set forth in paragraph “65” of the complaint.

66. Object to and deny the embedded assertions regarding “the aforementioned conduct” and deny the remaining allegations set forth in paragraph “66” of the complaint.

67. In response to the allegations set forth in paragraph “67” of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1” through “66” inclusive of their answer, as is fully set forth herein.

68. Deny the allegations set forth in paragraph “68” of the complaint except admit only that the individually named defendants were employed by the NYPD on or about October 28, 2013.

69. Deny the allegations set forth in paragraph “69” of the complaint.

70. Object to and deny the embedded assertions regarding “the negligence of the defendants” and deny the remaining allegations set forth in paragraph “70” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

71. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

72. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

73. Any injury alleged to have been sustained resulted from plaintiffs’ own culpable or negligent conduct or the culpable or negligent conduct of non-parties or third parties, and was not the proximate result of any act of defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

74. Plaintiffs provoked any incident.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

75. There was probable cause for plaintiffs’ arrest, detention, and/or prosecution.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

76. Punitive damages are not recoverable against the City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

77. Plaintiffs have not stated a viable claim under Monell v. Dep’t of Social Services, 436 U.S. 658 (1978).

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

78. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

79. Plaintiffs failed to mitigate any alleged damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

80. Plaintiffs have failed to comply, in whole or in part, with New York General Municipal Law §§ 50(e), 50(h), and/or 50(i).

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

81. To the extent that any force was used, such force was reasonable, necessary and justified.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

82. Plaintiffs' state law claims against defendant City are barred by the doctrine of immunity from judgmental errors in the exercise of governmental functions.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE:

83. Defendant P.O. Torres has not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, is protected by qualified immunity.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE:

84. Defendant P.O. Torres acted reasonably in the proper and lawful exercise of his discretion.

WHEREFORE, defendants City of New York and P.O. Torres request judgment dismissing the amended complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 23, 2014

Zachary W. Carter
Corporation Counsel of the City
of New York
Attorney for Defendant City and P.O. Torres
100 Church Street
New York, New York 10007
(212) 356-2418

By: /s
Randall M. Elfenbein
Special Assistant Corporation Counsel

To: BY ECF

Matthew Shroyer, Esq.
Law Offices of Michael S. Lamonsoff, PLLC
Attorney for Plaintiff